

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----x Case No.: 1:20-cv-02633-VSB

YINGCAI HONG,  
On his own behalf and on behalf of others  
similarly situated,

Plaintiff,      **ANSWER TO FIRST  
AMENDED COMPLAINT**

vs.

LIN'S GARDEN RESTAURANT INC  
d/b/a Lin's Asian Cuisine; and  
NEW DYNASTY CHINESE RESTAURANT LLC  
d/b/a Dynasty;  
HUAYONG LIN,  
LIANRONG HUANG, and  
XIANGHAI LIN,  
a/k/a Xiang Hai Lin  
f/k/a Ru Hai Lin

Defendants.

-----x

Defendants, **Lin's Garden Restaurant Inc., New Dynasty Chinese Restaurant LLC, Huayong Lin, Lianrong Huang and Xianghai Lin**, by their attorneys, **ZHANG & SUN, P.C.**, answers the Plaintiff's complaint upon information and belief as follows:

**INTRODUCTION**

1. Denies knowledge and information sufficient to form a belief as to the truth of the allegation contained in the paragraph "1" of the complaint, and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

2. Denies each and every allegation contained in the paragraph "2" of the complaint, and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

3. Denies each and every allegation contained in the paragraph “3” of the complaint, and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

4. Denies each and every allegation contained in the paragraph “4” of the complaint, and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

### **JURISDICTION AND VENUE**

5. Denies each and every allegation contained in the paragraph “5” of the complaint, and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

6. Denies each and every allegation contained in the paragraph “6” of the complaint, and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

### **PLAINTIFF**

7. Denies each and every allegation contained in the paragraph “7” of the complaint except admits that Plaintiff worked for Defendant, Lin’s Garden Restaurant Inc., as a deliveryman.

### **DEFENDANTS**

#### *Corporate Defendant*

8. Denies each and every allegation contained in the paragraph “8” of the complaint except admits that Defendant, Lin’s Garden Restaurant Inc., is a company doing business at 1506 Bronxdale Avenue, Bronx NY 10462.

9. Denies each and every allegation contained in the paragraph “9” of the complaint.

10. Denies each and every allegation contained in the paragraph “10” of the complaint.

11. Denies each and every allegation contained in the paragraph “11” of the complaint except admits that Defendant, New Dynasty Chinese Restaurant LLC, is a company doing business at 1470 East Avenue, Bronx NY 10462.

12. Denies each and every allegation contained in the paragraph “12” of the complaint.

13. Denies each and every allegation contained in the paragraph “13” of the complaint.

*Owner/Operator Defendants*

14. Denies each and every allegation contained in the paragraph “14” of the complaint.

15. Denies each and every allegation contained in the paragraph “15” of the complaint.

16. Denies each and every allegation contained in the paragraph “16” of the complaint.

17. Denies each and every allegation contained in the paragraph “17” of the complaint.

18. Denies each and every allegation contained in the paragraph “18” of the complaint.

19. Denies each and every allegation contained in the paragraph “19” of the complaint.

20. Denies each and every allegation contained in the paragraph “20” of the complaint.

21. Denies each and every allegation contained in the paragraph “21” of the complaint.

### **STATEMENT OF FACTS**

#### **Defendants Constitute an Enterprise**

22. Denies each and every allegation contained in the paragraph “22” of the complaint.

23. Denies each and every allegation contained in the paragraph “23” of the complaint.

24. Denies each and every allegation contained in the paragraph “24” of the complaint.

#### **Wage and Hour Claims**

25. Denies each and every allegation contained in the paragraph “25” of the complaint.

26. Denies each and every allegation contained in the paragraph “26” of the complaint.

27. Denies each and every allegation contained in the paragraph “27” of the complaint.

28. Denies each and every allegation contained in the paragraph “28” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

29. Denies each and every allegation contained in the paragraph “29” of the complaint.

30. Denies each and every allegation contained in the paragraph “30” of the complaint.

31. Denies each and every allegation contained in the paragraph “31” of the complaint.

32. Denies each and every allegation contained in the paragraph “32” of the complaint.

33. Denies each and every allegation contained in the paragraph “33” of the complaint.

34. Denies each and every allegation contained in the paragraph “34” of the complaint.

35. Denies each and every allegation contained in the paragraph “35” of the complaint.

36. Denies each and every allegation contained in the paragraph “36” of the complaint.

*Plaintiff YIGCAI HONG*

37. Denies each and every allegation contained in the paragraph “37” of the complaint.

38. Denies each and every allegation contained in the paragraph “38” of the complaint.

39. Denies each and every allegation contained in the paragraph “39” of the complaint.

40. Denies each and every allegation contained in the paragraph “40” of the complaint except admits that Plaintiff had Tuesdays off in addition to other random days off.

41. Denies each and every allegation contained in the paragraph “41” of the complaint.

42. Denies each and every allegation contained in the paragraph “42” of the complaint.

43. Denies each and every allegation contained in the paragraph “43” of the complaint.

44. Denies each and every allegation contained in the paragraph “44” of the complaint.

45. Denies each and every allegation contained in the paragraph “45” of the complaint.

46. Denies knowledge and information sufficient to form a belief as to the truth of allegation contained in the paragraph “46” of the complaint.

47. Denies each and every allegation contained in the paragraph “47” of the complaint except admits that Plaintiff was paid in cash.

48. Denies each and every allegation contained in the paragraph “48” of the complaint.

49. Denies each and every allegation contained in the paragraph “49” of the complaint.

50. Denies each and every allegation contained in the paragraph “50” of the complaint.

51. Denies each and every allegation contained in the paragraph “51” of the complaint except as otherwise pleaded herein.

52. Denies each and every allegation contained in the paragraph “52” of the complaint.

53. Denies each and every allegation contained in the paragraph “53” of the complaint.

54. Denies each and every allegation contained in the paragraph “54” of the complaint.

55. Denies each and every allegation contained in the paragraph “55” of the complaint.

56. Denies each and every allegation contained in the paragraph “56” of the complaint.

57. Denies knowledge and information sufficient to form a belief as to the truth of allegation contained in the paragraph “57” of the complaint.

58. Denies knowledge and information sufficient to form a belief as to the truth of allegation contained in the paragraph “58” of the complaint.

59. Denies each and every allegation contained in the paragraph “59” of the complaint.

60. Denies each and every allegation contained in the paragraph “60” of the complaint except as otherwise pleaded herein.

**COLLECTIVE ACTION ALLEGATIONS**

61. Denies knowledge and information sufficient to form a belief as to the truth of allegation contained in the paragraph “61” of the complaint.

62. Denies knowledge and information sufficient to form a belief as to the truth of allegation contained in the paragraph “62” of the complaint.

63. Denies knowledge and information sufficient to form a belief as to the truth of allegation contained in the paragraph “63” of the complaint.

64. Denies each and every allegation contained in the paragraph “64” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

***Numerosity***

65. Denies each and every allegation contained in the paragraph “65” of the complaint.

***Commonality***

66. Denies each and every allegation contained in the paragraph “66” of the complaint.

***Typicality***

67. Denies each and every allegation contained in the paragraph “67” of the complaint.

***Adequacy***



68. Denies each and every allegation contained in the paragraph “68” of the complaint except as otherwise pleaded herein.

***Superiority***

69. Denies each and every allegation contained in the paragraph “69” of the complaint.

70. Denies each and every allegation contained in the paragraph “70” of the complaint.

**STATEMENT OF CLAIMS**

**COUNT I**

71. Denies each and every allegation contained in the paragraph “71” of the complaint except as otherwise pleaded herein.

72. Denies each and every allegation contained in the paragraph “72” of the complaint.

73. Denies each and every allegation contained in the paragraph “73” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

74. Denies each and every allegation contained in the paragraph “74” of the complaint.

**COUNT II**

75. Denies each and every allegation contained in the paragraph “71” of the complaint except as otherwise pleaded herein.

76. Denies each and every allegation contained in the paragraph “76” of the complaint.

77. Denies each and every allegation contained in the paragraph “77” of the complaint.

78. Denies each and every allegation contained in the paragraph “78” of the complaint.

79. Denies each and every allegation contained in the paragraph “79” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

### **COUNT III**

80. Denies each and every allegation contained in the paragraph “80” of the complaint except as otherwise pleaded herein.

81. Denies each and every allegation contained in the paragraph “81” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

82. Denies each and every allegation contained in the paragraph “82” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

83. Denies each and every allegation contained in the paragraph “83” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

84. Denies each and every allegation contained in the paragraph “84” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

85. Denies each and every allegation contained in the paragraph “85” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

86. Denies each and every allegation contained in the paragraph “73” of the complaint.

87. Denies each and every allegation contained in the paragraph “73” of the complaint.

#### **COUNT IV**

88. Denies each and every allegation contained in the paragraph “80” of the complaint except as otherwise pleaded herein.

89. Denies each and every allegation contained in the paragraph “89” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

90. Denies each and every allegation contained in the paragraph “90” of the complaint.

91. Denies each and every allegation contained in the paragraph “91” of the complaint.

92. Denies each and every allegation contained in the paragraph “92” of the complaint.

#### **COUNT V**

93. Denies each and every allegation contained in the paragraph “93” of the complaint except as otherwise pleaded herein.

94. Denies each and every allegation contained in the paragraph “94” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

95. Denies each and every allegation contained in the paragraph “95” of the complaint.

#### **COUNT VI**

96. Denies each and every allegation contained in the paragraph “96” of the complaint except as otherwise pleaded herein.

97. Denies each and every allegation contained in the paragraph “97” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

98. Denies each and every allegation contained in the paragraph “98” of the complaint.

99. Denies each and every allegation contained in the paragraph “99” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

100. Denies each and every allegation contained in the paragraph “94” of the complaint.

#### **COUNT VII**

101. Denies each and every allegation contained in the paragraph “101” of the complaint except as otherwise pleaded herein.

102. Denies each and every allegation contained in the paragraph “102” of the complaint.

103. Denies each and every allegation contained in the paragraph “103” of the complaint.

104. Denies each and every allegation contained in the paragraph “104” of the complaint.

105. Denies each and every allegation contained in the paragraph “105” of the complaint.

### **COUNT VIII**

106. Denies each and every allegation contained in the paragraph “106” of the complaint except as otherwise pleaded herein.

107. Denies each and every allegation contained in the paragraph “107” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

108. Denies each and every allegation contained in the paragraph “108” of the complaint.

109. Denies each and every allegation contained in the paragraph “109” of the complaint.

110. Denies each and every allegation contained in the paragraph “110” of the complaint.

### **COUNT IX**

111. Denies each and every allegation contained in the paragraph “111” of the complaint except as otherwise pleaded herein.

112. Denies each and every allegation contained in the paragraph “112” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

113. Denies each and every allegation contained in the paragraph “113” of the complaint.

114. Denies each and every allegation contained in the paragraph “114” of the complaint.

### **COUNT X**

115. Denies each and every allegation contained in the paragraph “115” of the complaint except as otherwise pleaded herein.

116. Denies each and every allegation contained in the paragraph “116” of the complaint.

117. Denies each and every allegation contained in the paragraph “117” of the complaint.

118. Denies each and every allegation contained in the paragraph “118” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

119. Denies each and every allegation contained in the paragraph “119” of the complaint and respectfully refers the court to the underlying statute for the precise and accurate interpretation.

### **GENERAL DENIAL**

120. Defendants deny each and every allegation in the Complaint not specifically admitted herein.

**FIRST SEPARATE DEFENSE**

121. The Plaintiff failed, in whole or in part, to state a cause of action upon which relief may be granted.

**SECOND SEPARATE DEFENSE**

122. Subject to proof through discovery, the Court lacks subject matter jurisdiction over Plaintiffs' claims.

**THIRD SEPARATE DEFENSE**

123. The Complaint fails to state a claim upon which pre-judgment or post-judgment interest may be granted.

**FOURTH SEPARATE DEFENSE**

124. Defendants were not "Employer" as defined by the FLSA, and Defendants were not part of a "Joint Enterprise" as defined by the FLSA.

**FIFTH SEPARATE DEFENSE**

125. Plaintiffs were not "employees" as defined by the FLSA.

**SIXTH SEPARATE DEFENSE**

126. Subject to proof through discovery, Plaintiffs' claims, the existence of which is expressly denied, are barred by the doctrines of laches, unclean hands, waiver and/or estoppel.

**SEVENTH SEPARATE DEFENSE**

127. Subject to proof through discovery, some or all of Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

**EIGHTH SEPARATE DEFENSE**

128. If Defendants are found to have failed to pay Plaintiffs any amount due, which Defendant deny, Defendant is entitled under the equitable doctrines of setoff and recoupment to offset overpayments to Plaintiffs against any judgment.

#### **NIGHTH SEPARATE DEFENSE**

129. To the extent that discovery reveals that Plaintiffs previously received compensation for their alleged underpayments in connection with, or as a result of, a payment to Defendants' employees supervised by the Department of Labor, Plaintiffs' claims are barred by the doctrine of waiver.

#### **TENTH SEPARATE DEFENSE**

130. If Defendants are found to have failed to pay Plaintiffs or any purported member of the collective action and/or class action as alleged in the Complaint, any amount due, which Defendants deny, Defendants acted at all times on the basis of a good faith and reasonable belief that his actions were in compliance and conformity with all applicable federal and state laws and/or written administrative regulations, orders, rulings, guidance and/or interpretations, and therefore Defendants' actions were not willful or in reckless disregard of the Fair Labor Standards Act or New York Labor Law. Accordingly, Plaintiffs and/or any putative collective or class action members are not entitled to liquidated damages under the FLSA and/or New York Labor Law, and the FLSA's two-year statute of limitations should apply.

#### **ELEVENTH SEPARATE DEFENSE**

131. Plaintiffs' claims are barred in whole or in part by the provisions of Section 11 of the Portal-to-Portal Pay Act, 29 U.S.C. § 260, because any acts or omissions of



Defendants giving rise to this action were done in good faith and with reasonable grounds for believing that the actions or omissions were not a violation of the FLSA.

### **TWELVETH SEPARATE DEFENSE**

132. The answering Defendants reserve the right to assert additional affirmative defenses as such additional defenses become known through investigation, discovery or otherwise.

### **JURY DEMAND**

133. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendant demands trial by jury on all issues so triable as of right by jury.

**WHEREFORE**, the Defendants demand judgment dismissing the plaintiff's complaint in its entirety, awarding the Defendant with reasonable attorney fees, cost, fees and disbursements and for such other and further relief as the court deems just and proper.

Dated: Queens, New York  
January 26, 2022

Respectfully submitted,

ZHANG & SUN, P.C.  
Attorneys for Defendants

/s/Alice C. Zhang

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